

BIGFORK LAND USE ADVISORY COMMITTEE
Approved Minutes March 26, 2015
4:00 PM Bethany Lutheran Church – Downstairs Meeting Room

Chairwoman Joyce Mitchell called the meeting to order at 4:03 p.m.

Present: Board members: Joyce Mitchell, Susan Johnson, James Bonser, John Bourquin and Al Johnson and Secretary, Gwen Sutherland. Public: 9 members from the public. Flathead County Planning and Zoning: Erik Mack. Bigfork Water and Sewer: Julie Spencer

The agenda was amended to strike item C and adopted (m/s, J. Mitchell/J. Bonser, unanimous).

Minutes of the December 18, 2014 meeting were approved (m/s, S. Johnson/J. Bonser, unanimous).

Administrator's Report and Announcements:

Sign-in sheet passed around. Planning and Zoning website announced for all documents regarding minutes, agendas and applications. Website: flathead.mt.gov/planning-zoning/documents.

James Bonser and Shelley Gonzales were the only applicants for the two open positions, therefore they were elected by acclamation.

Update on past application: FZV 14-03 Michael and Debbie Thomas from the Board of Adjustment meeting. Erik Mack announced that the application was denied by the Board of Adjustment. The draft minutes from the February 3, 2015 BOA meeting will be approved or corrected at the April meeting.

Public Comment:

There was no public comment.

Application: Erik Mack corrected the application number to: **FZV-14-04 Michael and Teri Hager:** A request by Michael & Teri Hager for a Zoning Variance to property within the Bigfork Zoning District and zoned SAG-5 (Suburban Agricultural). The applicant is requesting a Variance to Section 5.01.030(2), "Accessory Use Restrictions", of the Flathead County Zoning Regulations. If granted, the requested Variance would allow the applicant to construct a garage within the front yard setback. The property is located at 664 Echo View Drive.

Staff Report: Erik Mack, Planning and Zoning Department, presented the application and reviewed Findings of Facts, referring to all diagrams and setbacks.

Q. A. Johnson: Is the drain field 180' from the lake?

A. Mack: Right

Q. A. Johnson: Was the impact of the drain field considered when the foundation was dug?

Q. J. Mitchell: How did the violation come?

A. Mack: From a neighbor – a question of access.

Q. J. Mitchell: Was a violation issued on any other property in the area?

A. Mack: No complaints were received on other properties.

Q. S. Johnson: Are other buildings in the area similar in size?

A. Mack: Yes.

Q: J. Mitchell: Is there an encroachment on the subject property?

A: Mack: Not sure.

Q: J. Bonser: Is that a dirt road?

A: Mack: Yes.

Q: J. Bonser: Could another dirt road be created?

A: Mack: Yes.

Q: J. Bonser: If the garage was built on either side, would they hit a drain field?

A: Mack: It is clear on the east side.

Q: A. Johnson: Is the shaded area the drain field?

A: Mack: No, the shaded area is the 20' setback.

Chairwoman Mitchell asked if there was any comments or questions from staff. There were none.

Applicant Report: Mr. Bill Tanner represented the Hagers. He stated that he is a neighbor who has lived in the area 13 years. The Hagers live out of the area and use this as a summer residence. They would like to build the garage to store recreational equipment and a car.

He presented numerous visuals and aerial shots of the area. He stated that even though the law states that accessory buildings should not be built in front yards, 12 out of 18 properties have buildings in the front yards along Echo View Lane. He explained that when they began construction on the garage, they made sure it was not on the drain field. He presented a letter from Baldi Construction who provided excavating services for the Hagers. The letter states that "No portion of the septic system or drain field was disturbed and or altered in any way to excavate for the new foundation."

Mr. Tanner explained that they used the fence for the property line. After the complaint, a survey was conducted finding the fence to be off by 4 to 6 inches. He said that the foundation is not on the drain field and they are in compliance except for the 4" on the west side of the property line.

Q: J. Mitchell: Is the neighbor who made the complaint here?

A: Tanner: No one is here complaining. The neighbors on all sides were contacted and there was no opposition.

A: Mack: We had a signed complaint.

Q: J. Mitchell: Have you seen any accessory buildings in the 13 years you have lived there? Are they grandfathered in?

A: B. Tanner: The basis of the complaint is the side yard setback.

Q: J. Bonser: It appears that the road encroachment is not on the neighbor's property.

A: B. Tanner: The foundation does not interfere with the road and the complainant has since sold the property.

Q: S. Johnson: What was the reason for not using the east side?

A: B. Tanner: The present location is the most logical place.

Q: S. Johnson: Is traffic going over the drain field?

A: B. Tanner: No

Q: A. Johnson: When was the area built up?

A: Mack: Over the last 50 years.

Q: A. Johnson: So it predates zoning?

A: Mack: Yes.

Q: A. Johnson: (referring to Baldi letter) Was the drain field impacted?

A: Mack: Not sure.

Q: A. Johnson: Do you know where the drain field is?

A: B. Tanner: I personally don't know.

Q: J. Bonser: Is ignorance of the law an excuse?

A: Mack: No, that's why we're here.

A: B. Tanner: It boils down to 4 to 6 inches.

A: Mack: The survey was done as part of the zoning request.

Q: A. Johnson: Could the garage be built on the east side with no zoning request?

A: Mack: It appears it could have been built on the east side with no zoning request.

A: B. Tanner: All the other properties are non-compliant.

A: A. Johnson: Current laws must be complied with.

Q: J. Bonser: Can the complaint be withdrawn?

A: Mack: No.

Q: J. Bourquin: Haven't a lot of buildings been built after zoning regulations?

A: Mack: We don't get site plans but if we have a complaint we follow up.

Agency Comment: None

Public Comment: None

Committee Discussion:

J. Mitchell: I drove over there and saw all the other structures. These properties are unique to meet SAG-5 regulations. With SAG-5 (bigger properties) there would have more room for accessory buildings to be placed in the back. However, we need to base our decision on the Findings of Facts.

J. Bourquin: A precedent has been set and I have a concern spending tax payer's dollars in court.

Mack: There is more going on in this case.

J. Mitchell: We're not enforcers.

J. Bonser: Common sense should come into play.

A. Johnson: This is a slippery slope. We can't let a violation go through just because someone got away with it. I'm not convinced about the drain field.

J. Mitchell: There is significant distance from the house to the proposed garage. Who prepared the site plan?

Mack: The applicant.

J. Mitchell: Let's go back to the Findings of Facts. Our obligation is to review the Findings of Facts.

Chairwoman Mitchell read each Finding of Fact. The members found #1 through #6 and #8 to be true. There was disagreement with Findings #7 and #9 because access has been adjusted and there has been clear and blatant past and new construction going on in the area. A recommendation was made to amend the wording on Fact #7 and Fact #9 to read:

#7-Granting of the variance request would not have an adverse effect on the neighboring properties or the public because the access has been adjusted.

#9-Granting of the variance is not likely to confer a special privilege that is denied to other properties in the district because other properties in the vicinity appear to have built accessory structures within the front yards.

A motion was made to adopt Findings of Facts 1, 2, 3, 4, 5, 6, and 8 and to amend Findings of Facts 7 and 9 (m/s, J. Mitchell/J. Bonser, unanimous).

A motion was made to approve FZV-14-04 in light of the history of that neighborhood both past and current with regards to accessory structures (m/s, J. Mitchell/J. Bonser). Vote was 4 in favor (Bonser, Bourquin, Mitchell, S. Johnson). One opposed (A. Johnson). This recommendation will be forwarded to the Board of Adjustment for their consideration on April 6, 2015.

Committee Reports:

None

Old Business:

None

New Business:

Debra Healy, a property owner in Bigfork Village, expressed serious concerns about a neighboring business regarding possible property encroachment, violation of open container laws and lewd acts. There were 8 people from the public present in support.

Chairwoman Mitchell said that BLUAC members are limited to hear applications that come from the county.

A motion was made to adjourn the meeting (A. Johnson/J. Bourquin, unanimous)

The meeting was adjourned at 5:23 p.m.

Respectfully submitted,

Gwen Sutherland, Secretary